

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

CONSTRUCTION INDUSTRY LABORERS)	
PENSION FUND, a Trust Fund,)	
)	
and)	
)	
JASON MENDENHALL and KEVIN FAHEY,)	
TRUSTEES OF THE CONSTRUCTION INDUSTRY)	
LABORERS PENSION FUND,)	
)	
Plaintiffs)	
)	
v.)	No.
)	
)	
KAW VALLEY SAND AND GRAVEL, INC.,)	
[SERVE: Benjamin G. Kates)	
Registered Agent)	
5600 Kansas Avenue)	
Kansas City, KS 66106])	
)	
Defendant.)	

COMPLAINT

Come now Plaintiffs, Construction Industry Laborers Pension Fund, a Trust Fund, and Jason Mendenhall and Kevin Fahey, duly appointed and acting Trustees of the Construction Industry Laborers Pension Fund; by and through counsel, and, for their cause of action against Defendant allege as follows:

PARTIES

1. Plaintiff, Construction Industry Laborers Pension Fund, (hereinafter referred to as "PENSION FUND") is a multiemployer pension plan within the meaning of Employee Retirement Income Security Act of 1974, as amended (hereinafter referred to as "ERISA"), 29 U.S.C. §§ 1002(37) and 1301(a)(3). Plaintiffs Jason Mendenhall and Kevin Fahey (hereinafter referred to as "Trustees") are duly appointed and acting Trustees of the Construction Industry Laborers Pension Fund. The Trustees are fiduciaries of the PENSION FUND, as that term is defined in ERISA, 29 U.S.C. §1002(21). The PENSION FUND's Board of Trustees collectively are the Fund's plan

sponsor within the meaning of ERISA, 29 U.S.C. §§ 1002(16)(B)(iii) and 1301(a)(10). The Trustees administer the Fund at its principal place of business in Kansas City, Missouri.

2. The PENSION FUND is primarily funded by contributions remitted by participating employers pursuant to negotiated collective bargaining agreements (herein referred to as "CBAs") with the Heavy Constructors Association of the Greater Kansas City Area (hereinafter referred to as "Association") and the Western Missouri and Kansas Laborers' District Council (hereinafter "Union"); that the Trust Agreement establishing the Plaintiff Fund was amended and revised effective January 1, 1976.

3. Pursuant to ERISA, 29 U.S.C. §1132(a)(3) and §1451(a)(1), the Trustees are authorized to bring civil actions on behalf of the PENSION FUND, its participants, and beneficiaries for the purpose of collecting withdrawal liability.

4. Defendant Kaw Valley Sand & Gravel Inc., is a Kansas corporation doing business in the States of Missouri and Kansas and particularly in the Western District of Missouri.

JURISDICTION AND VENUE

5. This is an action for declaratory, injunctive and monetary relief to recover delinquent withdrawal liability payments, interest and liquidated damages owed by defendant as a result of withdrawal from a multiemployer pension plan and to prevent future delinquent payments of withdrawal liability assessments to the PENSION FUND.

6. This action arises under the ERISA, as amended by the Multiemployer Pension Plan Amendment Act of 1980, 29 U.S.C. §1001, et seq. This Court has jurisdiction under ERISA, 29 U.S.C. §§ 1132(e), 1132(f) and 1451(c), 28 U.S.C. §2201 and §2202.

7. Venue lies in this Court pursuant to ERISA, 29 U.S.C. §1132(e)(2) and §1451(d) in that the Defendant does business and may be found in this district.

CLAIM: Delinquent Withdrawal Liability

8. Kaw Valley Sand and Gravel, Inc. (hereinafter referred to as "KAW VALLEY") was at all relevant times engaged in an industry affecting commerce, as defined by Section 301(a) of

the Labor-Management Relations Act ("LMRA"), 29 U.S.C. §185(a), and was an "employer" as defined by ERISA, 29 U.S.C. §1002(5).

9. KAW VALLEY was party to a collective bargaining agreement with the Union that required KAW VALLEY to contribute to the PENSION FUND on behalf of employees who performed work covered by the collective bargaining agreement. Pursuant to the collective bargaining agreement, KAW VALLEY made contributions to the PENSION FUND.

10. At all relevant times, KAW VALLEY was the "employer" for purposes of the determination and assessment of withdrawal liability pursuant to Title IV of ERISA.

11. Effective February 28, 2013, KAW VALLEY terminated its collective bargaining agreement with the Union, which constituted a complete withdrawal from the PENSION FUND.

12. As a result of the termination of the collective bargaining agreement, KAW VALLEY effected a withdrawal from the PENSION FUND and incurred withdrawal liability in the amount of \$262,195.00, as determined pursuant to ERISA, 29 U.S.C. §1381(b).

13. On September 30, 2014, KAW VALLEY was sent notice and demand for payment of withdrawal liability by the PENSION FUND in accordance with 29 U.S.C. §1382(2), §1399(b)(1), and §1399(c)(2), by United States Mail return receipt requested. The notice advised KAW VALLEY that it was required to discharge its withdrawal liability assessment, either in a lump sum payment of \$262,195.00 or 32 quarterly installments in the amount of \$10,371.00, with a final quarterly payment in the amount of \$1,076.00. Pursuant to ERISA, 29 U.S.C. §1399(c)(2), KAW VALLEY's lump sum payment or first quarterly installment was due no later than 60 days after September 30, 2014 or by December 2, 2014.

14. On February 10, 2015, following review of the assessment of withdrawal liability against KAW VALLEY, the PENSION FUND determined that KAW VALLEY was required to discharge its withdrawal liability assessment, either in a lump sum payment of \$262,195.00 or 44 quarterly payments of \$8,287, with a final quarterly payment in the amount of \$3,360. KAW VALLEY's first payment under the revised payment schedule was due March 2, 2015.

15. KAW VALLEY remitted payment of the first 15 installment payments in accordance with the quarterly installment payment schedule.

16. KAW VALLEY failed to pay the quarterly installment payment due September 2, 2018. On September 13, 2018, KAW VALLEY was sent a notice and demand via certified mail for payment of the 16th quarterly installment in the amount of \$8,287.00, which was due September 2, 2018, together with interest. KAW VALLEY failed to make the required withdrawal liability payment.

17. KAW VALLEY failed to pay the quarterly installment payment due December 2, 2018. On December 11, 2019, KAW VALLEY was sent a notice and demand via certified mail for payment of the 16th and 17th quarterly installment payments in the amount of \$8,287.00 each, which were due September 2, 2018 and December 2, 2018. An additional notice and demand for payment was sent via certified mail to KAW VALLEY on January 29, 2019. KAW VALLEY failed to make the required withdrawal liability payments.

18. KAW VALLEY'S remaining liability to the PENSION FUND for withdrawal liability consists of the following:

a)	Payment due September 2, 2018	\$ 8,287.00
b)	Payment due December 2, 2018	\$ 8,287.00
c)	Payment due March 2, 2019	\$ 8,287.00
d)	Payment due June 2, 2019	\$ 8,287.00
e)	Payment due September 2, 2019	\$ 8,287.00
f)	Payment due December 2, 2019	\$ 8,287.00
g)	Payment due March 2, 2020	\$ 8,287.00
h)	Payment due June 2, 2020	\$ 8,287.00
i)	Payment due September 2, 2020	\$ 8,287.00
j)	Payment due December 2, 2020	\$ 8,287.00
k)	Payment due March 2, 2021	\$ 8,287.00
l)	Payment due June 2, 2021	\$ 8,287.00
m)	Payment due September 2, 2021	\$ 8,287.00
n)	Payment due December 2, 2021	\$ 8,287.00
o)	Payment due March 2, 2022	\$ 8,287.00
p)	Payment due June 2, 2022	\$ 8,287.00
q)	Payment due September 2, 2022	\$ 8,287.00
r)	Payment due December 2, 2022	\$ 8,287.00
s)	Payment due March 2, 2023	\$ 8,287.00
t)	Payment due June 2, 2023	\$ 8,287.00
u)	Payment due September 2, 2023	\$ 8,287.00
v)	Payment due December 2, 2023	\$ 8,287.00
w)	Payment due March 2, 2024	\$ 8,287.00

x)	Payment due June 2, 2024	\$ 8,287.00
y)	Payment due September 2, 2024	\$ 8,287.00
z)	Payment due December 2, 2024	\$ 8,287.00
aa)	Payment due March 2, 2025	\$ 8,287.00
bb)	Payment due June 2, 2025	\$ 8,287.00
cc)	Payment due September 2, 2025	\$ 8,287.00
dd)	Payment due December 2, 2025	\$ 3,360.00

<u>Total Amount Due</u>	<u>\$ 243,683.00</u>
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19. KAW VALLEY waived any right it had to request arbitration of any of the matters concerning its withdrawal liability owed to the PENSION FUND. Consequently, the amount demanded by the PENSION FUND is due and owing pursuant to ERISA, 29 U.S.C. §1401(b)(1).

20. Pursuant to 29 U.S.C. § 1399(c)(5), the entire amount of withdrawal liability owed to the PENSION FUND by KAW VALLEY is immediately due and owing as a result of the default by KAW VALLEY.

21. In accordance with 29 U.S.C. §1451(g), a copy of the Complaint was delivered to PBGC by certified mail on or about the date the Complaint was filed.

WHEREFORE, the PENSION FUND requests judgment against KAW VALLEY SAND AND GRAVEL, INC., as follows:

- (a) Payment by KAW VALLEY to the PENSION FUND of the balance of all withdrawal liability in the amount of \$243,683.00;
- (b) Interest at the rate of 6.0% per annum calculated from the date of delinquency to the date of the filing of the Complaint from KAW VALLEY in the amount of \$7,210.35 in accordance with 29 U.S.C. 1132(g)(2)(B);
- (c) Liquidated damages in an amount equal to the greater of (i) interest thereon or (ii) liquidated damages provided for under the plan, in accordance with 29 U.S.C. §1132(g)(2)(C), in the amount of \$48,736.60;
- (d) Plaintiffs' reasonable attorney's fees and costs of this action in accordance with 29 U.S.C. §§ 1132(g)(2)(D) and 1451(e);
- (e) Such other and further legal or equitable relief as the Court deems appropriate.

Respectfully submitted,

ARNOLD, NEWBOLD, WINTER & JACKSON, P.C.

/s/ Bradley J. Sollars

Bradley J. Sollars, MO Bar No. 54931

/s/ Aaron D. Schuster

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